

15 October 2020

## **DECISION**

### **HARNESS RACING VICTORIA**

**and**

### **DARYL DOUGLAS**

<b>Date of hearing:</b>	8 October 2020
<b>Panel:</b>	Judge John Bowman (Chairperson) and Magistrate John Doherty (Deputy Chairperson).
<b>Appearances:</b>	Ms Kylie Harrison appeared on behalf of the Stewards. Mr Damian Sheales appeared on behalf of Mr Daryl Douglas.
<b>Charge:</b>	Australian Harness Racing Rule ("AR") 231(2) states a person shall not misconduct himself in any way.
<b>Particulars of charge:</b>	The particulars of the charge being that Mr Douglas gestured inappropriately whilst leaning out of a moving vehicle to a member of the public as he was arriving at the racecourse.
<b>Plea:</b>	Not Guilty

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### **DECISION**

Licensed 'A' grade driver Daryl Douglas has formally pleaded not guilty to the charge brought by Harness Racing Victoria ("HRV") Stewards for an alleged breach of Australian Harness Racing Rule ("AR") 231(2) which states a person shall not misconduct himself in any way. The particulars to support the charge are that on entering the Echuca Harness Racing meeting on Sunday, 20 September 2020, Mr Douglas gestured inappropriately to a member of the public. Specifically, it is also alleged that Mr Douglas' behaviour occurred whilst he was a passenger in a vehicle driven by his brother Glenn, which was towing a horse float, and following a traffic incident at an intersection close to the raceway. It is alleged Mr Douglas leaned out the passenger door, whistled to the occupants of the car involved at the intersection and gave the finger, commonly known as "the bird" to the person/s in the other car. I think it is commonly

understood that to give “the finger” is to voice your displeasure to others about their behaviour in a derogatory way to cause offence.

For his part, Mr Douglas disputes that it was he that whistled but acknowledged that what he did was to give the occupants of the other car three fingers, not one. This was his form of retaliation after “they instigated it”. In the opinion of Stewards, whether the gesture was one, two or three fingers, they regard it as a breach of the Rule and they fined Mr Douglas \$500 after he entered “no plea”.

Ms Harrison today has reminded the Tribunal that Mr Douglas’ alleged behaviour was witnessed by two Stewards and two race day officials. No witnesses have given evidence today before this Tribunal.

Mr Sheales on behalf of Mr Douglas made two primary submissions. Firstly, he submitted that the behaviour complained of does not fit the definition of misconduct. Respectfully, this Tribunal disagrees. For our purposes, a plain interpretation of misconduct can be “unacceptable or improper behaviour”. For present purposes, Mr Douglas’ behaviour, whether involving one or three fingers, can be regarded as improper, as it was meant to cause offence.

In the second part of his submission, Mr Sheales sought to distinguish the application of AR243 and AR231(2). Mr Sheales conceded that AR243 would have application to behaviour at events occurring away from licensed premises, such as racetracks. Ms Harrison advised that Stewards had considered this Rule when deciding to charge Mr Douglas, but had decided that any potential penalty would not fit to the crime alleged.

That being so, the scope of AR231(2) falls to be considered as to whether it has application outside a licensed premise, e.g. Echuca raceway. That is particularly so, because, as a Tribunal, we conclude that at the time of the alleged offending, neither Mr Douglas, nor the vehicle he was in had entered the Echuca raceway.

In our view, AR231(2) has application in respect to events and behaviour that occur within licensed premises only. To suggest otherwise, would be rendering licenced participants capable of being held accountable for their behaviour occurring anywhere in Victoria, even away from the eyes of the Stewards. That sort of behaviour may fall within AR243, but we are of the opinion that AR231(2) is limited and that there is a clear division between on and off course behaviour.

Accordingly, the Appeal is upheld, and the charge dismissed.

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Mark Howard  
Registrar, Victorian Racing Tribunal